

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

In Re:)	
)	Case No. 08-61570
)	
Yellowstone Mountain Club, LLC,)	
)	
Debtor.)	

THE HON. RALPH B. KIRSCHER, presiding

TRANSCRIPT OF PROCEEDINGS

December 5, 2008

Transcript Services:

Proceedings recorded by electronic recording;
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YELLOWSTONE MOUNTAIN CLUB BANKRUPTCY

- - -

BE IT REMEMBERED THAT this matter came on for hearing on December 5, 2008, in the United States Bankruptcy Court, District of Montana, The Hon. Ralph B. Kirscher, presiding:

The following proceedings were had:

THE COURT: We'll start with the people that are either present in the courtroom or on video. I'll have the attorneys all state their appearances on the record, and then I'll have the people on the telephone also identify themselves again and who they represent.

MR. PATTEN: Good morning, Your Honor. James Patten in Billings.

THE COURT: Okay.

MR. LAMDIN: Bill Lamdin, representing CrossHarbor, in Billings.

THE COURT: Okay.

MR. HURSH: Benjamin Hursh in Missoula, representing CrossHarbor.

THE COURT: Okay.

MR. COLEMAN: Shane Coleman in Billings, representing Credit Suisse.

1 MR. RHOADES: Quentin Rhoades in Missoula for
2 Normandy Hill Capital.

3 MR. BENDER: Ronald A. Bender in Missoula for
4 Michael Snow.

5 MR. STENSLAND: Dean Stensland in Missoula for
6 Prim Vintage Development, LP.

7 MR. CUFFE: Matt Cuffe in Missoula, also for Mike
8 Snow.

9 MR. BROWN: Steve Brown in Missoula for
10 Garlington, Lohn & Robinson. And I'm also here in capacity
11 as the chair of the unsecured creditors committee.

12 THE COURT: Okay.

13 MR. GRANT: This is John Grant in Helena for the
14 ad hoc committee.

15 MR. JONES: And Keith Jones, Joel Silverman, and
16 Teresa Whitney on behalf of the Department of Revenue, Your
17 Honor.

18 THE COURT: Okay. Then I'll go to the telephonic
19 appearances.

20 MR. CHEHI: Mark Chehi of Skadden-Arps for Credit
21 Suisse.

22 THE COURT: I'm sorry, please speak louder.

23 MR. CHEHI: Mark Chehi of Skadden-Arps for Credit
24 Suisse.

25 MR. MOORE: Paul Moore --

1 MR. McKAY: Dan McKay for the -- go ahead.

2 MR. MOORE: Paul Moore for CrossHarbor.

3 MR. McKAY: Dan McKay for the Office of the U.S.
4 Trustee.

5 MR. GREENSPAN: And Ron Greenspan, the chief
6 restructuring officer.

7 MS. BROWN: Susan Brown of Skadden-Arps for
8 Credit Suisse.

9 And Megan Cleghorn is also on the line with me
10 from Skadden-Arps for Credit Suisse.

11 MR. ALTER: Jonathan Alter for the ad hoc
12 committee of Yellowstone members.

13 THE COURT: Okay. Anyone else that's on
14 telephonically?

15 THE CLERK: Judge, I just received an e-mail from
16 a Benjamin Theines (phonetic) who apparently represents
17 Discovery Land Company and wants to join in the call. So I
18 was going to send him a dial-in number.

19 THE COURT: Absolutely.

20 THE CLERK: I will do that right now.

21 THE COURT: Okay. This is the time set for
22 emergency hearing on the request and motion for expedited
23 hearing concerning Local Rules 5074 -1 and 9014-1, and
24 discovery requests, and a deposition scheduling that has
25 occurred in this case over the past week.

1 I think it may be best to wait for the gentleman
2 with CrossHarbor to join so we've got everyone - we're not
3 happy to repeat - before I move to have -- well, until I
4 have Mr. Hursh or appropriate party present information on
5 their motion.

6 And there has also been a response filed locally
7 by Mr. Coleman on behalf of Credit Suisse. Obviously, we
8 have other counsel also representing Credit Suisse. It
9 will be just a moment, hopefully.

10 I will note just for the record and for people
11 that are present and can hear, you know, when we try to set
12 these emergency hearings, obviously it would be nice if we
13 had a broadband telephonic connection that we could
14 utilize. We're utilizing the District Court's bridge here
15 that's located in Missoula that accommodates up to eight
16 people. Apparently, we had more than that. We thought we
17 only had six to seven people that were calling in, and then
18 the eighth would have been the call to the Court to be able
19 to add it to recording. Obviously, other people added on
20 someplace because we didn't have the eighth spot, then, to
21 call into the court recording system.

22 So when, when we're trying to set these up, I
23 guess just as a point of practice for future instances
24 where this might occur - hopefully rarely - you know, if
25 you're going appear, fine, let us know; but if we think we

1 only have six or seven people, it changes how we have to
2 approach this. If we would have known, we would have had
3 the Sprint operator do a conference call back an hour ago,
4 and we wouldn't have had the delay that we've had with
5 people sitting around for an hour. So keep that in mind as
6 a process and procedure.

7 Also, since we're appearing in various sites and
8 by telephone, I want each of you, before you speak, to
9 identify yourself so that we know who's speaking.
10 Obviously, with some voices, we are very familiar with them
11 because we hear them year after year, and they're local
12 practitioners; but for, for this case, we have new, new
13 faces, new people, and we may not recognize your voice
14 immediately. And, also, for recording purposes, the
15 electronic court reporter is then able to identify who the
16 speaker is much more easily and readily; also, if there's a
17 transcript that has to be done, the transcribing court
18 reporter would have a much better way of knowing who is
19 speaking. So, again, always identify yourself first.

20 If we were in an evidentiary situation, which I
21 don't foresee this being today, but if we were, then I
22 would want you to even yourself before you raise your
23 objection so that we, again, know who is speaking and
24 raising the objection. We have to have that. And if you
25 don't, I'm going to remind you before we proceed. So keep

1 that in mind. Things will flow much, much easier, I think.

2 Do we know if we have the CrossHarbor counsel
3 yet, or individual?

4 UNIDENTIFIED SPEAKER: Discovery counsel.

5 THE COURT: Discovery counsel, I mean.

6 THE CLERK: Mr. Theines, are you on the
7 telephonic conference call?

8 I did provide him the dial-in number.

9 Oh, here we are.

10 THE COURT: Very good.

11 THE CLERK: Hello, Mr. Theines? Is anyone
12 holding on the telephonic end?

13 Did we lose the telephone parties?

14 MR. MOORE: This is Paul Moore. We're still on.

15 THE CLERK: Oh, great. Thank you.

16 THE COURT: That's the other thing. And I don't
17 mean to -- I mean I probably don't even need to say this,
18 but just being here in Missoula, I will waive the attire
19 rule for today. I see a couple of attorneys that are
20 dressed in business casual rather than business attire,
21 which basically means coat and tie. It doesn't appear that
22 you're necessarily speaking, but maybe are observing more
23 than participating. Obviously, it's an emergency hearing
24 and I would probably waive that today, but I have sent
25 people home before to get the proper attire before they can

1 appear.

2 Well, maybe Mr. Theines is going to just have to
3 catch up. I hate to keep people just holding here,
4 especially at the rates that I know are being charged.

5 So, Mr. Hursh, if you're the one that wants to
6 advocate on the motion.

7 MR. HURSH: I'll begin, Your Honor.

8 THE COURT: Okay.

9 MR. HURSH: Today's hearing --

10 THE COURT: And I would ask that you speak
11 loudly, because I want to make sure --

12 MR. HURSH: Okay.

13 THE COURT: And if you can't hear him on the
14 telephone connection, let us know, please.

15 MR. HURSH: Judge, the hearing here today - let
16 me give you a little background - had its genesis on the
17 courthouse steps in Butte after our hearing on the 25th
18 when counsel was advised by Suisse that in the event of an
19 adverse ruling, parties could prepare to spend significant
20 time in depositions in a contentious and protracted
21 discovery battle. Consistent with that threat, beginning
22 Friday immediately after Thanksgiving, a volley of e-mails
23 began coming through wherein Suisse began demanding various
24 items for production and unilaterally setting dates and
25 demanding people appear for depositions.

1 Ultimately, Suisse was advised that we had some
2 objections. We felt the manner in which they were
3 proceeding was unreasonable. And this culminated in a
4 telephone call on Wednesday, at which time the parties did
5 try to work out some sort of reasonable accommodations that
6 would meet everybody's needs. CrossHarbor's efforts to do
7 that failed. During the call, Suisse steadfastly demanded
8 that folks produce people and documents as demanded in
9 their requests, and barring that, they weren't willing to
10 agree to any sort of accommodation or even acknowledge
11 that, perhaps, what they were asking for exceeded the
12 allowable scope.

13 As the papers show, we then served on them our
14 objection. It's still clear that we weren't going to get
15 anything resolved so, on behalf of CrossHarbor, I requested
16 this hearing.

17 Now, it seems that one can't lose track of the
18 fact that the proposal put forth by CrossHarbor for DIP
19 financing was developed over the course of six to eight
20 hours on the 25th . You know, everyone was prepared on the
21 25th for there to be a very short hearing wherein
22 Suisse's -- Suisse, essentially, would live up to what it
23 had proposed to the Court at the very first hearing in this
24 matter. There were significant concerns raised at the very
25 first hearing in this matter about Credit Suisse's

1 proposal. Those concerns were assuaged by Suisse in a
2 variety of ways, indicating there would be these meetings
3 and everybody would get to the table and a long-term
4 solution would be crafted.

5 Instead, what we received on the 25th was, "We're
6 sorry. Despite our best efforts, we can't fund the very
7 proposal we made and was accepted by Debtors in this case,
8 so maybe the best thing we should do is just mothball the
9 project and move on."

10 CrossHarbor stepped in, filled the vacuum that
11 was left by Suisse's failure to follow through. And for
12 reasons that aren't clear to CrossHarbor, Suisse now seems
13 to be pursuing a course that really doesn't seem to be
14 directed at determining whether or not the DIP financing
15 should go through for CrossHarbor.

16 That's our position, Your Honor.

17 THE COURT: Okay. One thing I guess I will ask
18 in that regard -- and I recall this, and I'll say that I've
19 reviewed your motion very quickly, but it seemed as if
20 there was a statement made, and just to clarify: Was, in
21 fact, the discovery that was propounded already prepared
22 and out on the 25th, or is it just that you had this
23 hearing on the steps that there would be forthcoming
24 discovery?

25 MR. HURSH: No, let me be clear. The discovery,

1 to my knowledge, I don't know when the discovery was
2 actually prepared at Skadden's offices. There was,
3 however, a statement made there on the 25th on the
4 courthouse steps as we were all leaving that, in light of
5 an adverse ruling, that's what we could expect. And then
6 so that was, I believe, the Tuesday prior to Thanksgiving.
7 And then immediately on -- it was approximately, I think,
8 about 11 o'clock Friday morning after Thanksgiving that I
9 received the first e-mail essentially putting on paper what
10 was said on the courthouse steps Tuesday evening.

11 THE COURT: And the discovery that they were --

12 MR. HURSH: Yeah, it was a -- it wasn't, it
13 wasn't finalized discovery Friday morning; it was just a
14 Word document that essentially laid out what the requests
15 would be for documents. But it wasn't on pleading paper or
16 in the form of a subpoena at that point.

17 THE COURT: Okay. Also, Mr. Hursh, is this
18 requested discovery of the depositions -- you've commented
19 that it may be broader than just for DIP financing. Is it
20 clear that that's the case, that it is broader than just
21 for finalization of DIP financing which would be set for
22 hearing a week -- well, next Thursday?

23 And I mean is it attempting to raise claims that,
24 in fact, would not be necessarily germane to the DIP
25 financing but may be to other claims that Credit Suisse may

1 or may not have against participants in this bankruptcy
2 that it might require even an adversary proceeding?

3 MR. HURSH: Judge, that would be our position,
4 that, in fact, Suisse is using the issues surrounding the
5 DIP financing to conduct a very broad fishing expedition
6 into matters that aren't, in fact, at all related to the
7 DIP financing. I mean their requests go well beyond those
8 issues that would be appropriate for such discovery in the
9 hearing scheduled for next Thursday.

10 THE COURT: Okay. I'm not sure who would like to
11 respond next. Mr. Lamdin, I realize Mr. Hursh has
12 presented a motion there. Can you think of anything else
13 you wish to add, or can we move on, then, to other counsel?

14 MR. LAMDIN: We can move on, Your Honor. Thank
15 you.

16 THE COURT: Okay. I guess at that point, then,
17 since it's directed towards Credit Suisse and Mr. Coleman
18 raised the response, I don't know if Mr. Coleman is the one
19 participating or if Mr. Chehi is or how you wish to handle
20 this as a response.

21 MR. COLEMAN: Your Honor, Shane Coleman. I
22 understand that Mark Chehi will be addressing this.

23 THE COURT: Okay. Mr. Chehi.

24 MR. CHEHI: Good afternoon, Your Honor. Mark
25 Chehi of Skadden-Arps for Credit Suisse.

1 THE COURT: If I could have you speak as loudly
2 as you can within the confines that you are. I'm having a
3 hard time hearing you.

4 MR. CHEHI: Okay. And I may to --

5 THE COURT: That's better.

6 MR. CHEHI: -- shout a little bit into this
7 phone. Is that better?

8 THE COURT: That's better.

9 MR. CHEHI: Very good. Let me focus on the
10 timing of discovery requests that have been made in this
11 case just to make it clear that the discovery requests
12 directed to CrossHarbor and the ad hoc committee, in
13 particular - which are essentially equivalent to the
14 discovery requests directed to the other parties, including
15 Discovery Land Company - are all -- were first generated
16 and delivered as informal discovery requests in New York
17 City on November 19, which was the date of the meetings
18 among the various parties to discuss additional possible
19 financing and, you know, global resolution of the issues.

20 I hand-delivered to counsel for CrossHarbor and
21 to counsel for the ad hoc committee, you know, a two-page
22 summary of the document requests that we believe would be
23 pertinent in the event that the parties were not going to
24 be able to reach agreement on financing and if there were
25 to be any priming financing proposed adverse and

1 non-consensually against our client. And we, we did
2 deliver those documents on the 19th of November, which is
3 some weeks ago now. And the immediate reaction from
4 CrossHarbor, on the one hand, was that they would never
5 produce any of these types of documents; and the committee
6 response was not positive, either. And so as far as when
7 the discovery requests were first made, that was when they
8 were made on an informal basis.

9 The fact that they were rejected led us to
10 ultimately, you know, propound the formal discovery we did
11 on the day after Thanksgiving, which was our first
12 opportunity after receiving Your Honor's memorandum of
13 opinion, which was, I believe, delivered late in the day on
14 the day before Thanksgiving. And so as early in the day
15 after Thanksgiving as possible, I sent out by e-mail to all
16 of the counsel for the various parties copies of the
17 informal discovery requests that we had developed and had
18 already provided to CrossHarbor and the ad hoc committee,
19 at least, indicating that these would be the documents
20 that, as was indicated earlier, would be requested, and
21 that we were in the process of that same day preparing
22 formal discovery papers. And that's what we did.

23 And I believe it was later that evening or early
24 evening of the day after Thanksgiving when we issued the
25 discovery requests, the formal discovery requests and the

1 accompanying subpoenas, understanding that we were not
2 going to be confronting consensual discovery; that, No. 2,
3 that we ultimately, notwithstanding the locations and dates
4 and times of requests of production and depositions, we
5 would be working with the various parties to agree upon
6 mutually convenient locations and times for not only
7 production of documents, but depositions. And I made that
8 clear in my e-mail to the party on the -- parties on the
9 morning after Thanksgiving and then, I believe,
10 subsequently in the e-mail that we sent out that Friday of
11 the formal discovery papers.

12 And then the following Monday, we invited all of
13 the parties to set a time to meet and confer about our
14 discovery requests. And we were able to do that with the
15 debtors. The other parties were unwilling to meet and
16 confer until Wednesday. And we had late afternoon on
17 Wednesday a teleconference to discuss the scope of our
18 discovery requests, the reason for that, and the
19 willingness and availability of all the parties to provide
20 the discovery and the witnesses.

21 The debtors served on us, Your Honor, a request
22 for a production of documents and a request to depose
23 Steven Yankauer, the Credit Suisse representative. And we
24 were agreeable to that and, in fact, reached relatively
25 easily a consensus with the debtors on a schedule for a

1 deposition - (inaudible) - deadline this coming Tuesday.
2 And we worked it out with the debtors so they would provide
3 their witnesses, three of them, including Mr. Greenspan,
4 Edra Blixseth, and another manager of the property, in our
5 Los Angeles offices. And we would make those depositions
6 available by video to any party that, you know, could --
7 wanted to appear by video or in person. We also agreed to
8 make our offices in New York City available for any
9 conference room and video capabilities for purposes of East
10 Coast attorneys. Those were agreements reached with the
11 debtor.

12 Discovery Land Company agreed on Wednesday to
13 provide a witness for a deposition in our Los Angeles
14 office on Monday, I believe it was at 10 o'clock in the
15 morning or thereabouts. And those are our scheduled
16 depositions.

17 I think the - (inaudible, papers shuffling in
18 microphone) - Your Honor, is that there's clearly a
19 disagreement among the parties - meaning our client on the
20 one hand and then CrossHarbor, Discovery Land Company, and
21 the ad hoc committee on the other - as to what the proper
22 scope of our discovery requests can be. And as is set
23 forth in our response that was filed today, we think that
24 really everything that we have asked for is appropriate and
25 reasonable under the circumstances of the case. We are

1 seeking discovery of various relationships, arrangements,
2 agreements, communications that are non-privileged between
3 and among CrossHarbor, Discovery Land Company, members of
4 the ad hoc committee, and Edra Blixseth as the owner of the
5 company in respect of the parties' prepetition and
6 postpetition agreements and arrangements, and the like,
7 that go to both debtor-in-possession financing for the
8 company and restructuring arrangements.

9 And as we included in our response today, we're
10 not just speculating that there are arrangements that are
11 undisclosed, and the like, and objectives that are
12 undisclosed to the Court and other parties, but there are,
13 you know, documents that we received from
14 CrossHarbor prepetition, you know, proposing various
15 restructuring and refinancing arrangements which would
16 include - (inaudible) - equity participation by
17 CrossHarbor, Discovery Land Company, Edra Blixseth, and
18 unnamed others to accomplish really a change in control of
19 the company and the property to CrossHarbor.

20 And we -- you know, our position, Your Honor, is
21 that those facts which CrossHarbor, in particular, and the
22 other parties are energetically opposing disclosure of are
23 germane to the final approval of the CrossHarbor financing.

24 On the one hand, the financing itself provides
25 expressly that it's conditioned upon the continued

1 management of the debtors by Discovery Land Company. And
2 it's set forth in our papers. That existing arrangement
3 which, you know, existed before the petition was filed and
4 since then is highly irregular. They had no management
5 contract, they had not been receiving any payment over the
6 last month, and it's very clear that their involvement is
7 in the nature of a participation to become a principal in
8 an acquisition of these companies. And for a company in
9 Chapter 11, that seems to be an extraordinary management
10 arrangement to have if it's undisclosed. And even if it is
11 disclosed, it's unorthodox.

12 But in any event, the record is pretty clear.
13 From what we've gleaned from the prepetition correspondence
14 sent to us, we think it will be more than abundantly clear
15 that, you know, Discovery has numerous undisclosed, you
16 know, arrangements and participations with CrossHarbor and
17 CrossHarbor's ultimate objective in terms of these debtors
18 and their properties. And to the extent that the
19 CrossHarbor DIP financing is predicated on or conditioned
20 on Discovery's continued management of the company, it
21 gives both Discovery and CrossHarbor and anybody else
22 working with them ample opportunity to manipulate the
23 course of events in a manner that could bring an abrupt or
24 premature termination of financing in the cases. And that
25 would result in a sale or a "for sale" of the company to

1 CrossHarbor in a manner that might preclude competitive
2 bidding for the company if the assets fall to the detriment
3 of the third-party creditors, including our client and
4 others.

5 THE COURT: Mr. Chehi.

6 MR. CHEHI: Yeah.

7 THE COURT: Isn't that an issue that you just
8 raised that would come up in the event that there is a sale
9 that maybe didn't meet the requirements of either a
10 confirmed plan or a 363 sale?

11 MR. CHEHI: Your Honor, you know, if, if we get
12 to the point where the case is forced into an emergency
13 liquidation sale where there has not been an ample
14 opportunity for Ron Greenspan and for any other truly
15 independent fiduciary in control of the company to
16 meaningfully market the assets, negotiate competing bids,
17 and the like, we'll be in a situation where, you know, the
18 value will have been lost. And then we can argue about why
19 that happened, who shot John, and whether, you know,
20 CrossHarbor is a good-faith purchaser or whether any of
21 what happened was good or bad. But that's the scenario we
22 all want to avoid.

23 We want to avoid putting these companies in a
24 situation where there are current obvious -- a
25 stalking-horse bidder, if you want to call CrossHarbor

1 that. It's not just, you know, dealing with the companies
2 as a potential acquirer on a hand -- an arm's-length basis,
3 but is actually, you know, controlling the purse strings
4 and the financing that's essential to a continued Chapter
5 11 process. And if they and Discovery and others
6 affiliated with them or working with them are able to
7 manufacture, under the terms of the CrossHarbor DIP
8 financing under - (inaudible) - default, CrossHarbor then
9 effectively has the ability to frustrate a competitive
10 auction process if that's what this case ends up in. It
11 could very well end up in a plan of reorganization.

12 THE COURT: Well, Mr. Chehi, Mr. Chehi, I guess a
13 couple of questions I have for you. One -- well, maybe
14 three matters. But one is, and I'll relay it back so I
15 don't forget about it: The Discovery and the employment of
16 Discovery, I think I raised at the last hearing as to
17 whether they had sought an application of employment, which
18 I don't think has yet been filed. I mean I think if
19 they're, they're being employed by Debtor to do things up
20 there, they probably need the authority of this Court. I
21 raise that as one issue.

22 Secondly, the issue that you raised regarding
23 frustration of sale, and that, I mean Credit Suisse,
24 subject to the priming lien, is a first secured creditor on
25 all the assets, correct?

1 MR. CHEHI: Should be, yes.

2 THE COURT: And so as a result of that, in the
3 event of any sale, the seller, the debtor, and any
4 prospective buyer are going to have to deal with Credit
5 Suisse because of your liens on all the property up there,
6 correct?

7 MR. CHEHI: Your Honor, having to deal with us
8 is -- you know, everyone always has to deal with everybody
9 else in the process. The issue is: Is there going to be
10 an opportunity in this case for third-party independent
11 potential investors, plan funders, or acquirers to have an
12 opportunity to have any due diligence and involvement in a
13 sale or restructuring process?

14 THE COURT: But Mr. Chehi, Mr. Chehi --

15 MR. CHEHI: Yes.

16 THE COURT: -- as long as Credit Suisse is
17 protected on their first lien, what else are you entitled
18 to, to be paid on your first lien?

19 MR. CHEHI: Your Honor, having first liens is a
20 good legal position to be in, but the real issue is: What
21 is the value that you -- do you monetize on your secured
22 claims?

23 And the only way to monetize those is to have a
24 third party acquire your assets that are subject to liens.
25 And it's good that CrossHarbor is interested in doing that.

1 We like that idea, that someone might be interested, having
2 expressed an interest in buying the assets, but in this
3 world of restructuring and bankruptcy, it's always better
4 to have two parties who are interested in buying the assets
5 because then you have an auction and --

6 THE COURT: But I guess you're missing my point.
7 As long as you get paid, what do you care?

8 MR. CHEHI: Well, I'm not sure whether we're
9 going to get paid anytime soon or --

10 THE COURT: But, Mr. Chehi, you also may have the
11 protections under Clear Channel in the 9th.

12 MR. CHEHI: Your Honor, you know, there's a
13 process issue here, and then there's a legal entitlement
14 issue. We understand our legal entitlement. But our right
15 to receive the proceeds of our collateral through a sale or
16 plan of reorganization or in some other restructuring
17 transaction in Chapter 11 depends a lot upon the legal
18 principles, but the practical outcome is dependent upon
19 whether there are more than one buyer at the table to bid
20 for those assets.

21 You know, if CrossHarbor is there for the \$100
22 million and someone else is there for \$150 million, then
23 suddenly CrossHarbor will have to meet that bid. If
24 someone else comes in and they lever up in an auction
25 process the amount that people are willing to pay for

1 the assets, that's a different outcome for us than if you
2 only have one bidder, and that's the best outcome out
3 there.

4 THE COURT: Well, I guess my concern is that,
5 depending upon the value of these properties, there won't
6 be a sale that's approved unless it satisfies the first
7 lienholder. I mean if you're secured, you're secured; if
8 you're not secured, you're not. But to the extent you're
9 secured, you're going to be protected as the first
10 lienholder.

11 MR. CHEHI: Your Honor, but that's -- the fact
12 that we have a lien doesn't guarantee that there's any
13 particular price that's paid for the assets. And there are
14 numerous ways to maximize the value of the assets,
15 including through a Chapter 11 plan, including through
16 a sale under a plan. There's a range of alternatives than
17 are better what I would call an emergency liquidating fire
18 sale, Chapter 11 sale, or Chapter 7 sale.

19 And our concern, and it's a very significant
20 concern, is that the approval of the CrossHarbor DIP
21 financing puts the only, you know, obvious purchaser for
22 the asset in a position of being able to regulate the
23 timing of the sale and forcing it into what I call a fire
24 sale, liquidation sale, as opposed to an orderly Chapter 11
25 sale process that might include a 363 sale, it might

1 include a plan of reorganization that will increase values.

2 THE COURT: But, Mr. Chehi, that runs counter to
3 what happened last week when, on the day of the hearing on
4 DIP financing, Credit Suisse had said, "No, we're not
5 providing anything." Which you would expect at that point
6 that this case would tank.

7 MR. CHEHI: Actually, Your Honor, I want to just
8 make clear on the record, you know, what happened, because,
9 you know, we don't want to be too broad-brush-stroke about
10 this. Credit Suisse had endeavored in the week before that
11 hearing to put together a 24-month financing package for
12 the company. And we explained to Your Honor in chambers
13 that was unsuccessful, given the events of the preceding
14 weekend, including the Citigroup financial disaster. And
15 people were unable to get the last incremental amount of
16 commitments from their existing lender groups to fund at
17 that time a longer-term DIP financing.

18 And we were, you know, ourselves, and everyone
19 was disappointed to have to report that to Ron Greenspan on
20 the eve of the hearing. And we said, "You know, as an
21 alternative to that, because we just don't have the money
22 today to do that, notwithstanding everyone's best efforts
23 to pull that together, we are available to, you know,
24 provide funding for at least a 60-day process to provide
25 for a sale," which is about what everybody wanted to do,

1 but that was the best thing available at that moment.

2 During the course of the day of the hearing, Your
3 Honor, we, Credit Suisse, continued to, you know, man the
4 phone and was able to raise commitments for a 24-month
5 funding. And that was made available --

6 THE COURT: But, Mr. Chehi, I think you beg my
7 question because at the time I started the hearing at nine
8 o'clock or thereafter, there was no financing on the table,
9 as I was informed. And without the scurrying around with
10 CrossHarbor -- or with the DIP of the debtor with
11 CrossHarbor, there wouldn't have been anything by three
12 o'clock that afternoon.

13 You know, so I guess I don't know that the
14 argument really holds up, especially when you're a first
15 lienholder. If you were an unsecured creditor or a second
16 or third creditor who is undersecured or maybe wholly
17 undersecured, I can understand your arguments that you
18 would want to make sure that there was protection for you
19 and that there was no collusive active by the DIP financing
20 or any third-party buyer or anything else.

21 And this Court, if I get any inkling of that,
22 there are going to be problems with that because I'm not
23 going to stand for it. One, I'm not so certain it doesn't
24 raise criminal issues that I have an obligation to refer to
25 the U.S. Attorney. But that's not how we run our court in

1 Montana and how we handle the bankruptcy process. Things
2 are to be above board. And if anything that you're even
3 alleging now between CrossHarbor, Discovery, if there's
4 merit to any of that that may be obtained through
5 discovery, this Court will take a great displeasure on
6 those parties and how they're dealt with through this
7 process. I just don't go for any of that stuff.

8 MR. CHEHI: Your Honor, that's exactly --

9 THE COURT: Either the debtor makes this or he
10 doesn't make it, but I guess I'm just -- when you're
11 sitting in a first-lien position on property that is
12 allegedly worth, by testimony, 700 million-plus, I find
13 that maybe the first secured creditor is arguing too much
14 about what's happening and should be sitting there going,
15 "How can we help to make sure that we get paid? Because
16 all we want is our money."

17 MR. CHEHI: Your Honor, these properties are not
18 worth \$780 million. That's testimony from Edra Blixseth,
19 and she's not a real-estate expert, was never qualified.
20 It was based upon some unusual formulations of value that
21 the debtors apparently requested their appraisers to
22 provide which were simply undiscounted sums of proceeds of
23 sales, and the like, over a period of time. That is what
24 those numbers refer to, that is not a market value.

25 Mr. Greenspan -- you know, I attempted to address

1 those issues at the last hearing, and I understand Your
2 Honor, you know, thought that his testimony on that was
3 that pertinent, so were inclined to go with the Edra
4 Blixseth testimony.

5 THE COURT: But, Mr. Chehi, you had the
6 opportunity to refute that or to -- I mean you're the one,
7 I think, who had raised the question - well, or Mr. Patten
8 did - in the hearing in Missoula. So it was never refuted.

9 But, anyway, I guess I'm --

10 MR. CHEHI: May I add one other point, Your
11 Honor, that I think is very, you know, important?

12 THE COURT: You may.

13 MR. CHEHI: And that is that we, you know, Credit
14 Suisse, you know, in working to try to make sure that this
15 Chapter 11 process is run appropriately and is funded
16 appropriately, has been successful in raising commitments
17 from lenders to fund the, you know, 24-week plan, the
18 longer-term plan and delivered it to Mr. Greenspan, I
19 believe it was yesterday. And we will be filing with the
20 Court today, you know, a fully committed, fully funded
21 debtor-in-possession financing arrangement that does not
22 require Discovery Land Company to be managing the debtors.
23 That's not to say that they're not going to be involved,
24 and we're not judging that issue, but we're not
25 conditioning our financing on that sort of insider

1 involvement which is, you know, highly suspicious and
2 irregular; No. 2, is actually provided on, we believe,
3 better terms. It provides more money and is a better
4 outcome for the debtors.

5 And so the issue of whether or not the
6 CrossHarbor financing is worthy of final approval is not an
7 issue of, "This is the only financing on the table." We
8 have financing in place that is improved terms over the
9 CrossHarbor proposal and does not --

10 THE COURT: It would have been nice to have had
11 it last week.

12 MR. CHEHI: Your Honor, I agree, it would have
13 been nice to have it. I think everybody wished it would
14 have been there then. But you know what? You know,
15 difficult financial times.

16 But that doesn't -- just because it wasn't
17 available last week doesn't mean that the Court and the
18 other parties should ignore, you know, the downside and the
19 problems associated with the CrossHarbor financing its
20 self-interest in acquiring the assets -- (inaudible.)

21 THE COURT: So, Mr. Chehi, is the debtor going to
22 also, in addition to preparing and advocating for final DIP
23 financing with CrossHarbor next Thursday, the alternative
24 of financing with Credit Suisse?

25 MR. CHEHI: That's the debtor's decision, Your

1 Honor. And, you know, Mr. Greenspan can address those
2 issues. But we think from a fiduciary point of view, that
3 it's the better financing proposal. It doesn't suffer from
4 the defects of the involvement of CrossHarbor and
5 Discovery, who are potential acquirers of the asset in, you
6 know, essentially having the fox in the chicken house with
7 respect to the entire case. It doesn't allow them to
8 manipulate the timing of the sale, it doesn't allow them to
9 shut off the lights prematurely.

10 Because they're not interested, I'm sure, in
11 competitive bidding. Having represented a lot of acquirers
12 over time, Your Honor, most of them are interested in being
13 able to win an asset with their original offer. But if
14 there's competitive bidders and there's a competitive
15 bidding situation, typically people have to pay more.
16 CrossHarbor's interest as an acquirer is not in paying more
17 but in paying as little as possible for the asset at the
18 end of the day, and they can use their control over the
19 debtor's debtor-in-possession financing to truncate the
20 process of the sale. And we don't think that's appropriate
21 under the circumstances.

22 THE COURT: Well, I don't know how they're going
23 to get to that position without dealing with Credit
24 Suisse's first lien position.

25 MR. CHEHI: Your Honor, it's an issue of timing.

1 And it's not an issue of our legal entitlement; it's an
2 issue of whether or not Mr. Greenspan, as an independent
3 fiduciary, has an opportunity to bring third parties to the
4 table, which is, as we understand it, his intention. He
5 can do that as long as he has a Chapter 11 process in which
6 to do it. If the Chapter 11 process is cut short because
7 of an event of default under the CrossHarbor financing,
8 there's going to be very little for the Court or anybody
9 else to do when CrossHarbor wants to enforce its rights
10 under the debtor-in-possession order that it would get on
11 the final basis to, you know, cut short the case.

12 THE COURT: Well, and CrossHarbor may --

13 MR. CHEHI: And, Your Honor --

14 THE COURT: -- CrossHarbor may have a problem
15 there. If I get information or testimony that that's
16 what's occurring, that may not occur.

17 MR. CHEHI: Your Honor, but that's the purpose of
18 our discovery, you know, is to be able to begin to, you
19 know, get to the Court -- unless the Court is undertaking
20 its own independent factfinding, you know --

21 THE COURT: Well, the Court doesn't do that.

22 MR. CHEHI: Right. And so, you know, the parties
23 have to do it. We're the party, we have a vested interest
24 in it. We want to make sure that there are not untoward
25 circumstances here which are not in the best interest of

1 the estate. That's our position on information and belief.
2 And given some of the documents that we have and our
3 understanding of the arrangement, that's what we think is
4 a, we think it's a real problem. We should have a right to
5 explore those.

6 And, listen, if there's nothing to hide here and
7 there's no inappropriate arrangements and circumstances,
8 and the like, discovery will show that. If there are
9 inappropriate arrangements and circumstances, we believe
10 that those are material to approval, final approval of the
11 CrossHarbor financing or -- and the merits of it. And we
12 want to be able to put that -- have a fair opportunity to
13 put that before the Court on next Thursday.

14 THE COURT: Well, Mr. Chehi, what if, in fact, it
15 doesn't occur by next Thursday but you still have those
16 claims that you can seek through the normal, routine
17 discovery process? If I allow it. I mean right now, the
18 discovery requests aren't even, aren't even appropriate,
19 given our rules, so that's one problem.

20 MR. CHEHI: Your Honor, we haven't mentioned
21 once -- I think Your Honor raised the issue of whether we,
22 the lenders, have any claims against anybody here. We
23 haven't once said we have claims against anybody. We do
24 not have, as far as I know, any claims. Any claims that
25 would exist, you know, would most likely be, if claims at

1 all, claims of the debtor in possession and the estate
2 against various, you know, parties.

3 And, of course, you know, the CrossHarbor DIP
4 financing, by its own terms, provides for -- I believe the
5 word is, quote and unquote, broad releases for the benefit
6 of all those parties. You know, we haven't even -- you
7 know, we're not thinking about claims against people; we're
8 thinking about the integrity of the Chapter 11 process and
9 what's happening now.

10 We're not looking to take litigation discovery
11 against these parties; we're looking for discovery of
12 relationships and circumstances that would tend to show
13 that CrossHarbor is not the most appropriate party to be
14 providing DIP financing under the circumstances when it's
15 interested in being the acquirer of the assets - and that's
16 what this case is all about, selling the company - and,
17 No. 2, has very intimate relationships, apparently, with
18 Discovery Land Company, which is actually managing the
19 debtor.

20 THE COURT: Anything else, Mr. Chehi?

21 MR. CHEHI: Your Honor, again, we have, you know
22 -- you know, we've made our facility available in New York
23 so that Mr. Byrne can appear. And if he wants to appear in
24 Boston, we can do that. But, you know, we're trying to
25 arrange a mutually convenient venue for both debtor's

1 counsel and other counsel in the case, whether they be on
2 the West Coast or the East Coast, to be able to participate
3 simultaneously in video depositions. And we would hope
4 that Your Honor would require, you know, some deposition
5 testimony by CrossHarbor and also by Discovery Land
6 Company.

7 You know, we can talk about all these issues, but
8 unless there's a fact record made and an opportunity to do
9 it, I don't think we're getting our due process in terms of
10 addressing the merits of the CrossHarbor financing, not to
11 mention, you know, the adequate protection issue.

12 THE COURT: You know, you've mentioned,
13 Mr. Chehi, that you had, you had discussed with debtor's
14 counsel, and that debtor's counsel didn't have -- that they
15 had concurred with you on selected dates and times for some
16 depositions?

17 MR. CHEHI: Yes, Your Honor. We have those
18 scheduled for Saturday in Los Angeles. And we have a
19 deposition slot for Mr. Yankauer from Credit Suisse on, on
20 Sunday. He would actually be in New York, because that's
21 where he lives, and would be available for a deposition by
22 the debtors. And we believe that Mr. Patten would likely
23 still be in Los Angeles, and so he would in our Los Angeles
24 office where the other depositions are occurring, and
25 question Mr. Yankauer. And we think it would be

1 appropriate.

2 There's going to be a production of witnesses by
3 CrossHarbor on one hand and Discovery Land Company and the
4 ad hoc committee on the other, that they also be
5 depositions that are taken on, I assume, Sunday so that
6 there's enough time on Saturday and Sunday to do that and
7 give everybody an opportunity, then, on Monday and Tuesday
8 to file -- (inaudible.)

9 THE COURT: Okay.

10 MR. CHEHI: Your Honor, the one last point I want
11 to make is, and it is just, you know, basic: If the
12 parties that we're seeking discovery of have nothing to
13 hide, they wouldn't be resisting so energetically and
14 strenuously and coming to the Court to block, you know,
15 this type of discovery. If they had nothing to hide,
16 they'd put up their witness, they'd give us the documents,
17 instead of putting in their discovery papers, which they
18 do, that they just are not going to comply with requests
19 for documents that touch upon Discovery Land Company's
20 arrangement with anybody or their compensation arrangement
21 with the debtors. You know, all of the, all of the topics
22 that are germane to what I've been talking about are, in
23 their view, off limits. And they should be happy to
24 vindicate the record, vindicate themselves, and be able to
25 demonstrate there's nothing untoward going on, but,

1 instead, we're getting quite the opposite.

2 MR. MOORE: Your Honor, if I may. Paul Moore for
3 CrossHarbor. Can I just respond briefly?

4 Your Honor, we have --

5 THE COURT: Yes, Mr. Moore.

6 MR. MOORE: -- nothing to hide. The point --
7 sorry, Your Honor.

8 I mean the point is that we have been-- from Day
9 1 in this case, we have been accused of things that if they
10 weren't stated in a courtroom would probably be slanderous
11 and actionable. And the whole premise of this is that
12 there's this grand scheme by CrossHarbor to steal the
13 asset, to engineer an abrupt termination of financing which
14 would result in a forced liquidation sale. But that's not
15 where Mr. Byrne is going. Don't forget, he testified to
16 all these matters already. Mr. Chehi may not have liked
17 the answers, but he testified under oath, and we stand by
18 that testimony. But if that was his scheme, then it was
19 handed to us on November 25th. And shame on my client if
20 he snatched defeat from the jaws of victory by standing up
21 and offering \$20 million.

22 And, apparently, Mr. Chehi thinks that even
23 though that's been approved on an interim basis, that
24 somehow he could renegotiate it all over again. And that's
25 where -- that's the whole purpose of this: To berate and

1 beat everyone into letting them do what they want when they
2 want to do it.

3 And I'm just appalled that -- these accusations
4 make no sense whatsoever. If you read his opposition, at
5 one point, he accuses - talk about paranoia - he accuses
6 CrossHarbor, Discovery Land, Ms. Blixseth, and one or more
7 members of the ad hoc member committee - which apparently
8 are key to his value for his assets - of, quote: Acting in
9 conflict for manipulating control of Debtors' affairs in
10 these Chapter 11 cases in order to achieve a sale or
11 transaction of - (inaudible) - ownership, and control of
12 the debtors and their assets in CrossHarbor, Discovery
13 Land, Edra Blixseth, and other unnamed persons.

14 Your Honor, I've been doing this for 32 years
15 and, believe me, I would not come into your court with any
16 kind of scam. And if my client's goal was to buy this at a
17 fire sale, I certainly wouldn't suggest to him that that
18 Tuesday morning we move mountains to come in and give
19 \$20 million worth of financing or that we finance the
20 entire season. None of this makes any sense. It's
21 contrary to the facts as you know them, it's contrary to
22 all the testimony you have.

23 And you talk about Mr. Byrne, you know, not being
24 forthcoming, not willing to answer questions. Well, the
25 window of opportunity we're being given to testify is -- I

1 think it's either Sunday morning or Sunday night or
2 sometime on Monday. And particularly for those of us on
3 the East Coast, the deposition schedule as it now stands
4 is: Ron Greenspan at noontime East Coast time; Edra
5 Blixseth approximately at 4, which I think it means once
6 they're done with Mr. Greenspan; Mr. Williamson,
7 approximately at four, which is 6 o'clock East Coast time;
8 on Sunday, we switch to East Coast time, and we've got
9 Mr. Yankauer at 12 p.m.

10 So, certainly, you know, the notion that somehow
11 Mr. Byrne's trying to hide something -- he flew -- he
12 appeared by video last time to testify, and he's flying to
13 the court again this week with me. It's just silly. I
14 mean this is just an effort to intimidate, to control the
15 case.

16 Somehow - (inaudible) - thinks that if their
17 selected funding people -- and, Your Honor, let me point
18 out that the primed the existing bondholders at the first
19 hearing. There's like 40 bondholders, as I understand
20 them. A select group came in, represented by the same
21 agent -- and you note that Mr. Chehi appears only on behalf
22 of the agent, not the bondholders. That's because on
23 behalf of the agent, the agent for both groups, he came in
24 and primed the other ones. He sat there and didn't
25 complain about the valuation Ms. Blixseth testified to, but

1 now he doesn't like it.

2 He now has a whole new group. And, Your Honor, I
3 haven't heard who the members of that group are. The last
4 time he came in, he wouldn't tell us who they were. So if
5 you want to talk about an abuse of process, I'll tell you,
6 this is the most abusive I've seen in 32 years. Thank you.

7 THE COURT: Thank you. Mr. Hursh.

8 MR. HURSH: Well, Judge, I was just - (inaudible)
9 - make a couple comments, some of which my echo
10 Mr. Moore's.

11 But what Credit Suisse has told this Court and
12 anyone sitting in the gallery watching these proceedings
13 from Day 1 is, "We're going to run the table. And if we
14 can't run the table, nobody will."

15 And this is consistent with the approach they've
16 had since Day 1. The idea that, "If there was nothing to
17 hide, why do it?" well, the reality is, in fact,
18 CrossHarbor's saying, "This isn't your table to run, there
19 are other options, and we've offered one. Let's see what
20 happens." Okay?

21 Secondly - and, again, I know it echoes what
22 Mr. Moore just said - but I would just ask that the Court
23 think for a moment about the testimony that Sam Byrne gave
24 at the last hearing. It addressed the very issues that
25 Mr. Chehi now seeks to revisit. He's seeking to plow

1 ground that's already been plowed. I mean I know I'm
2 echoing here and I don't want to go on, but I just think
3 that that's important to remember here.

4 MR. ALTER: Your Honor, Jonathan Alter. May I
5 speak very briefly?

6 THE COURT: You may, Mr. Alter.

7 MR. ALTER: Thank you, Your Honor. Just a couple
8 of points. With regard to the issue of when discovery was
9 first propounded, I just wanted to note for the record that
10 Bingham was, in fact, handed an informal discovery request
11 in the context of the settlement meeting in Skadden-Arps in
12 New York. Frankly, we've found that to be quite
13 distressing, thinking, Why would someone hand you a
14 settlement -- during a settlement discussion, a broad set
15 of, you know, discovery requests when you're trying to sit
16 down to reach some sort of a constructive resolution?

17 It was clear to us, was that it was an attempt to
18 further posture and threaten litigation if we refuse to go
19 along. Why would we spend the time and the money, Your
20 Honor, responding to such broad discovery requests before
21 we even had a contest with Credit Suisse?

22 Moreover, Your Honor, we were ultimately ready to
23 go along with the Credit Suisse proposal, but, again, as
24 the record properly reflects, they backed out the day of
25 the hearing so we were left with no choice.

1 Your Honor, with respect to the planned sale
2 benchmarks that Mr. Chehi complains about, I'd just simply
3 note for the record that those benchmarks are identical
4 from the CrossHarbor proposal as they are the Credit Suisse
5 proposal.

6 With regard to the discovery plan itself, Your
7 Honor, it's extraordinarily broad, as people have said.
8 It's looking for eight depositions, roughly, over the
9 period of two or three days. We object, of course, as the
10 other parties have, to the breadth of these requests which
11 go way beyond anything of relevance.

12 I think the record should reflect again the
13 importance of the fact that our group is a group of
14 voluntary homeowners who have banded together because
15 they're concerned about their property, the employees, and
16 the local community. We have approximately 150 members
17 representing a number higher than that - (inaudible) - land
18 actually owned. We are only looking for the club to
19 proceed and to thrive and to grow and to get through this
20 process. If there is any relevance whatsoever to serving
21 us with discovery and subpoenas, both - (inaudible) - just
22 like any creditors, it is entirely unclear to my committee.

23 Concerns with the sale process or the monitoring
24 of the DIP can all be addressed by the Court as we go
25 along, and I'm certain that the Court will admonish and

1 properly reprimand anyone that runs afoul of this Court's
2 orders. This discovery is extraordinarily expensive, it's
3 extraordinarily contentious, and it's purely, purely driven
4 by litigation.

5 As to the relevance, Your Honor, maybe we could -
6 (inaudible) - some relevance in some questions that are
7 directed to the right people regarding adequate protection
8 or valuation information, but certainly not to some
9 conspiracy theory with no facts to support it. There will
10 be time after the financing hearing, Your Honor, for
11 discovery within a reasonable time frame by Credit Suisse,
12 but also of Credit Suisse.

13 And, Your Honor, I suggested that any reasonable
14 discovery that's directed at my ad hoc committee be limited
15 in some scope because, again, there are 150-plus members
16 and the number keeps growing as this case progresses. We
17 have gotten, I think, at least 20 new members since the
18 case actually filed, Your Honor.

19 So, again, on behalf of the ad hoc group of
20 members, we respectfully request that the discovery be
21 curtailed or simply waived in this context.

22 THE COURT: Thank you, Mr. Alter.

23 MR. ALTER: Thank you.

24 THE COURT: Mr. Patten, I have a question for you
25 as it relates to the comments made by Mr. Chehi: At this

1 point in time, Debtor hasn't really raised any objection to
2 the depositions scheduled. It appears the schedules have
3 been scheduled and are going forward. Is that your
4 understanding?

5 MR. PATTEN: Yes, Your Honor. We have endeavored
6 to comply with the discovery to the best of your ability
7 within a time. We produced numerous documents yesterday.
8 And it's our intention to comply to the greatest extent
9 that we can.

10 THE COURT: What's the status, then, on the
11 depositions? Who's scheduled and when as it relates to you
12 and to the debtor?

13 MR. PATTEN: Tomorrow, we have Mr. Greenspan;
14 Ms. Blixseth; and Hans Williamson, who is the -- I'm not
15 sure of his official title, but he's the business manager
16 on site at the Yellowstone Club to be deposed tomorrow.
17 And then pursuant to my request, Credit Suisse has offered
18 Mr. Yankauer to be deposed on Sunday.

19 MR. CHEHI: We're really just talking about two
20 depositions that we're requesting, Your Honor. That's
21 Mr. Byrne and then the Discovery Land Company
22 representative, who had agreed -- they had agreed to make
23 their person available on Monday at, I believe,
24 10 o'clock a.m. --

25 THE COURT: Mr. Chehi?

1 MR. CHEHI: -- (inaudible) - Los Angeles office.

2 Yes, sir.

3 THE COURT: That was Mr. Chehi speaking?

4 MR. CHEHI: Yes.

5 THE COURT: Okay.

6 MR. SKLAVER: Your Honor, this is Steven Sklaver
7 of Susman Godfrey. I am counsel for Discovery Land
8 Company.

9 May I say a quick, quick few words?

10 THE COURT: Yes.

11 MR. SKLAVER: As an administrative matter, Your
12 Honor, I need to -- we were just retained to assist
13 Discovery Land Company because Morgan Lewis, their ordinary
14 counsel, was conflicted out by Credit Suisse, who would not
15 waive the conflict - (inaudible) - counsel. So I need to,
16 as an administrative matter, make a quick oral motion for
17 admission pro hac vice.

18 THE COURT: For the limited purposes of this
19 hearing, that is granted, to be followed up within the next
20 two or three days by motion.

21 MR. SKLAVER: Thank you, Your Honor. Discovery
22 Land Company had agreed to provide a witness to answer
23 questions about the DIP financing that was proposed on
24 November 25th. We have objections that were served by
25 in-house counsel before we were retained. And a preview of

1 that deposition testimony is going to be, "We don't know
2 anything," which is the events happened at 9 in the morning
3 and finished at 3 p.m., and Discovery Land Company, the
4 developer, wasn't even there for the hearing.

5 As far as questions about the grand conspiracy of
6 collusion and collecting documents on a huge discovery
7 request about any communication that Discovery Land has had
8 with CrossHarbor or with Edra Blixseth or anyone else -
9 (inaudible) - objections to that. And we and join the ad
10 hoc committee and CrossHarbor's comments today, which is:
11 The collusion arguments are inappropriate - (inaudible,
12 coughing in microphone) - appears to be many days late and
13 many dollars short. These issues appear from the opinion
14 to have been addressed on the November 25th hearing. And
15 we will make ourselves available if counsel for Credit
16 Suisse wants to ask questions about the November 25th
17 financing, but the collusion stuff we do believe is
18 inappropriate, burdensome, excessive, and inappropriate.
19 Thank you, Your Honor.

20 THE COURT: You may admit that they have -- if
21 there were any merit to such allegations, that might be
22 something that would come up in the event of any, any sale?

23 MR. SKLAVER: Yes, Your Honor, in the event of a
24 sale. We just think this is not the appropriate time under
25 a four- or five-day notice period. Discovery Land did not

1 even get this informal discovery on November 19th. The
2 first time Discovery Land received it was on the Friday
3 after Thanksgiving. So we have had it for less than a
4 week. And then Credit Suisse wouldn't waive the conflict,
5 so they had to hunt down and find new counsel here in Los
6 Angeles to try and assist them. I am here in the office
7 trying to go through tons of e-mails. I'll have to try to
8 create a privilege log -- (inaudible.)

9 There will be a time when the alleged collusion
10 accusations may be relevant, if the event that -- for which
11 the collusion may be relevant - (inaudible) - a sale come
12 about, but now is not that time.

13 MR. CHEHI: Your Honor, Mark Chehi here.

14 The Discovery Land Company involvement with
15 various parties, both prepetition and postpetition, is
16 something that needs to be addressed by the Court rather
17 immediately. Because as Your Honor has said, they have to
18 make application to be retained and paid by the estate.
19 And, indeed, the CrossHarbor financing makes their
20 retention and involvement and control over the management
21 of the company a condition of a CrossHarbor financing.

22 So it seems to me that while one can talk about
23 holding off on all of these issues until a sale, it begs
24 the question of: Aren't we going to be addressing these
25 issues about Discovery and its relationship, and the like,

1 in the very near future? Or there's not going to be
2 satisfaction of the condition of the CrossHarbor financing,
3 which is truly the reason why all of these issues need to
4 be explored in connection with final approval of the
5 CrossHarbor financing.

6 THE COURT: Mr. Patten, what is your intent on
7 behalf of the debtor in filing an employment application
8 for Discovery?

9 MR. PATTEN: Your Honor, I received a proposed
10 contract by e-mail about six o'clock last night. I have
11 not had a chance to review it yet. It was my goal to have
12 that completed today and to discuss it with my client and
13 submitted to the Court for approval today.

14 THE COURT: Okay. I mean I think what Mr. Chehi
15 just raised is an issue that goes to their application of
16 employment, whether they should or shouldn't be employed.
17 So, obviously, we need to get at that issue, if there's
18 oppositions to that, to that application.

19 At this point in time, with the debtors'
20 depositions -- well, the debtors agreeing to the four
21 depositions, those are going forward. Is that pretty much
22 everyone's understanding, Mr. Patten and Mr. Chehi?

23 MR. PATTEN: Yes.

24 THE COURT: Okay. So it really leaves what?
25 What are we looking at, then? We're looking at one of --

1 Mr. Byrne and one of Discovery's. So we're talking about
2 two depositions here?

3 UNIDENTIFIED SPEAKER: And the ad hoc committee,
4 Your Honor.

5 THE COURT: Oh, and the ad hoc committee, yeah.

6 MR. ALTER: Your Honor, again, I can't believe
7 we're discussing the potential deposition of an ad hoc
8 committee of homeowners. I would respectfully request that
9 the Court consider whether that's necessary or appropriate
10 under the circumstances.

11 THE COURT: The Court will.

12 MR. ALTER: And this is Jonathan Alter.

13 THE COURT: The Court will, Mr. Alter.

14 MR. ALTER: Thank you, Judge.

15 MR. BROWN: Your Honor?

16 THE COURT: Mr. Brown.

17 MR. BROWN: Thank you, Your Honor. I'm here
18 speaking in my role as chair of the unsecured creditors
19 committee. That committee was just organized on Wednesday
20 of this week. And we -- since that time, we've been pretty
21 much working nonstop trying to retain counsel. So I'm here
22 sort of on an interim basis, not as official counsel for
23 the committee, but as chair of that committee. We do
24 anticipate having counsel in place by Monday and actually
25 asking for an application out of the DIP financing that

1 counsel be paid out of that. So we do anticipate that that
2 will be done.

3 We have not been consulted in any of this
4 process, partly because I think the committee was formed so
5 recently, but partly because, you know, a lot of this has
6 been happening for quite some time.

7 Our position on this is -- and we have discussed
8 it in a meeting, but our position is: We understood this
9 was going to be very, very narrow, and any discovery that
10 was going to occur was only in relation to the DIP
11 financing, and it doesn't preclude further discovery that
12 may be necessary down the road. And obviously, we want to
13 preserve our ability to take discovery we're up to speed on
14 the case and our counsel is up to speed on the case. So
15 that's really our position.

16 And, you know, we're speaking on behalf of
17 everybody who's an unsecured creditor, which, as you know,
18 is an extremely broad group of people, including some of
19 the people Mr. Alter represents all the way down to just
20 small businesses here in Montana. So we don't really have
21 a position on this motion other than, as I sit here, I get
22 more and more nervous at the breadth of the discovery that
23 seems to be possible here because a lot of this stuff may
24 have to happen again once we have a -- have counsel and
25 have another creditor and once DIP financing is in place.

1 And I hate to see all this have to happen more than once
2 when, really, the issue is: Should the DIP financing be
3 approved next Thursday or not? So thank you.

4 THE COURT: Thank you, Mr. Brown. Anyone else
5 like to make any comment?

6 MR. SKLAVER: Yes, Your Honor. Steven Sklaver
7 for the Discovery Land Company.

8 I do want to make the statement that we do agree
9 that in the time where an application to be paid is made,
10 there may be an appropriate venue for discovery, perhaps,
11 related to this alleged collusion conspiracy. But Monday
12 is not that time when all we're discussing is the DIP
13 financing. Thank you, Your Honor.

14 THE COURT: Thank you. Mr. Stensland.

15 MR. CHEHI: Mark Chehi again, Your Honor.

16 It can't be that the involvement of Discovery as
17 a requirement of this CrossHarbor financing put -- allows
18 Discovery to be outside the ambit of the merit of the
19 CrossHarbor financing. If they can't be -- if they can't
20 properly be involved in managing the debtor, it's because
21 they're not disinterested, because they have various
22 involvement and objectives in their own capacity as an
23 acquirer and as a participant. And that's reflected
24 clearly in the document that we attached to our response
25 today. It just seems to me that those issues have to be

1 explored before the Court can get the final approval of the
2 CrossHarbor financing. And that's irrespective of an
3 application to employ them and pay them.

4 THE COURT: Well, it seems, it seems that the
5 issue over their employment, any issue that might be raised
6 about their employment certainly is an issue that this
7 Court takes very seriously, as well as I understand the
8 issue that, well, in the event, then that discovery should
9 for some reason not be approved by this Court, what that
10 does to the DIP financing. And that's something obviously
11 that this Court is concerned about and obviously should be
12 of great concern to the debtor, as well, and to, I would
13 hope, a lot of the other participants in this bankruptcy.
14 Because if, in fact, the DIP financing ends or is ended on
15 short notice because of some event of default such as
16 Discovery not being employed, then we're back to where we
17 were last Tuesday with no financing.

18 MR. CHEHI: Your Honor, Credit Suisse - Mark
19 Chehi again - has put on the table and will be filing
20 today, just so that everybody in the world had notice of
21 it, you know, this committed financing, which is, you know,
22 more than equivalent to what CrossHarbor has on the table
23 but doesn't have any of the infirmities in respect of
24 conditioning it on Discovery Land Company or any other, you
25 know, insider relationships continuing.

1 We believe that the merits of the CrossHarbor
2 financing final approval has to take into account the
3 alternatives, which is the Credit Suisse financing, and
4 these issues of infirmity with Discovery, and the like.
5 And then that - (inaudible) - discovery of. We'll make a
6 record on it. Maybe there's nothing there, and it's all
7 neutral, and people are avoiding this because they're
8 concerned about spending the time. But, you know, in my
9 view, Your Honor, that's not what's going on.

10 THE COURT: Mr. Chehi, how is it that --

11 MR. MOORE: Your Honor, if I may; Your Honor, if
12 I may. Paul Moore.

13 THE COURT: Mr. Moore.

14 MR. MOORE: Your Honor, it's Paul Moore. Could I
15 just address that last issue regarding Discovery Land?

16 THE COURT: Okay.

17 MR. MOORE: Regardless of what people think, it's
18 certainly not our intent to create a default or veto power
19 over the loan. I feel confident in saying that we -- to
20 the extent necessary, we will modify our conditions such
21 that if the Court finds that Discovery's employment is
22 inappropriate under applicable law, then certainly that
23 won't be a breach. And we will work around that condition
24 to either find someone else who's reasonably acceptable,
25 that is approvable by the Court, or to monitor in a

1 different way. But I'm certain we are not creating a loan
2 for the purpose of creating default. And I'm not trying
3 to - (inaudible) - Discovery, Your Honor; I just think it's
4 such a red herring and taking on a life of its own.

5 Again, I would point out, I would point out that
6 Mr. Byrne testified at length regarding all of these
7 relationships. No one tried to hide anything. If it turns
8 out that he testified falsely, then God forbid what will
9 happen to him.

10 THE COURT: I guess the question that I have for
11 Credit Suisse is: What gives them the opportunity to file
12 a motion for additional financing unless it comes through
13 the debtor?

14 MR. CHEHI: We're not filing a motion, Your
15 Honor; we're just filing the term sheet and the commitment
16 letter so that everyone knows what the terms are.

17 THE COURT: I see, I see. Mr. Stensland.

18 MR. STENSLAND: Dean Stensland on behalf of Prim
19 Vintage Development. And we have no position on this
20 motion before the Court today, but just one thing to clear
21 up the record, because it was raised at the November 25th
22 hearing and again by the Court today. The issue is as
23 follows: Credit Suisse is not the only holder of a
24 first-position lien on Yellowstone Club assets. Prim
25 Vintage is a -- was an owner of 160 acres and sold the real

1 property to the Yellowstone Club. They have an \$8 million
2 promissory note; they have a first-lien possession -- or
3 position on that 160 acres; they're listed in the
4 bankruptcy schedules as an undisputed, fully secured
5 creditor.

6 And I just wanted to raise that just because the
7 focus of these hearings has been on the fact that Credit
8 Suisse is a prepetition lender and has a \$307 million loan,
9 and they have liens on -- that they have. We also have a
10 first-position lien, although much smaller. But I just
11 wanted to clear up the record that there is another
12 first-position lien on an asset that doesn't belong to
13 Credit Suisse.

14 THE COURT: Okay. Mr. Stensland, I do have a
15 follow-up to that, and it's more for clarity: Is this
16 property, your client's property, involved with the
17 easement that Mr. Greenspan testified to at the last
18 hearing which an easement has to be acquired?

19 MR. STENSLAND: I'm not privy to knowledge of
20 that, Your Honor.

21 THE COURT: Okay, very good. Thank you.

22 MR. BROWN: I can speak to that, Your Honor.

23 THE COURT: Mr. Brown.

24 MR. BROWN: The easement that Mr. Greenspan was
25 speaking about was an access easement to the Yellowstone

1 Club. And it is a condition of future subdivision decision
2 approvals. It's not within the Yellowstone Club itself;
3 it's outside the Yellowstone Club, but it provides access
4 to basically the boundary of the club. So it is not really
5 internal to the Yellowstone Club; it's just an access
6 easement to it.

7 THE COURT: To get to the club?

8 MR. BROWN: Correct.

9 THE COURT: From the public road?

10 MR. BROWN: Yes. There's already one main public
11 access, there's two emergency accesses. This would provide
12 a second regular access that the County, Madison County,
13 has said is a better long-term public access. It requires
14 that as a condition of future plat approvals. And that's
15 what Mr. Greenspan was testifying, Your Honor.

16 THE COURT: The Prim property, is that contiguous
17 to the club property?

18 MR. BROWN: It is contained within the club
19 property. There's 13,000 acres that make up the club.
20 Prim has 160 acres --

21 THE COURT: Internal.

22 MR. BROWN: Internal, within that 13,000.

23 THE COURT: I understand. Okay, thank you.
24 That's really not relevant for the hearings -- or the
25 matters we're hearing today; that was just for

1 clarification.

2 Anyone else have comment?

3 Oh, Mr. Bender.

4 MR. BENDER: Ronald Bender for Michael Snow.

5 I have no knowledge in terms of what's been going
6 on here other than just this seeing -- (inaudible.) The
7 only thing I would request is that other parties be allowed
8 to participate by phone in terms of any of these
9 depositions.

10 THE COURT: Why?

11 MR. BENDER: Rather than find some video hookup
12 or travel to LA or Boston.

13 THE COURT: Do you have any interest in it?

14 MR. BENDER: We might.

15 THE COURT: Is it something you can view later or
16 read later or schedule it on our own?

17 MR. BENDER: I'm just looking at the expense and
18 the flexibility in terms of all the parties that are out
19 here, in terms of schedules.

20 THE COURT: I do understand that part of it,
21 Mr. Bender.

22 Anyone else? No one else?

23 Well, as it relates to the motion of discovery,
24 the depositions - with an exception - the discovery that's
25 been provided, the request of depositions - and I guess I'm

1 not certain if subpoenas are out, and maybe there are - are
2 in violation of our rule. It's very clear under our local
3 rule that this Court will set and determine what rules of
4 discovery or adversary rules will apply in a contested
5 matter under 9014. I don't think the rule can be any
6 clearer. There's been no such motion made, I've ruled on
7 no such motion. And I certainly in the past in other cases
8 have ruled on that and have required the parties to go
9 through the process and file the motion, we take it up if
10 there's an objection and see if there needs to be a
11 limitation imposed or if what's being proposed is fine, so
12 -- except to the extent that, as already been addressed by
13 Debtor, that they have agreed to schedule depositions,
14 which include not only the property manager -- or the
15 business manager, Ms. Blixseth, and Mr. Greenspan, and then
16 the representative from Credit Suisse, which parties have
17 mutually agreed to those, I see no reason that those
18 depositions cannot go forward. You've agreed to them, and
19 I don't see that those have an impact.

20 As far as it relates to any propounded discovery
21 that's been submitted, that discovery is quashed because it
22 doesn't comply with the local rule. And if a motion -- you
23 wish to make a motion that needs to be filed, it will be
24 taken up at an appropriate time in relation to any response
25 that's filed. If there's no response, it will be granted

1 after 10 days unless this Court sets it for hearing to
2 determine why.

3 As it relates to the scheduled depositions with
4 CrossHarbor and Discovery Land, I'm quashing those, again,
5 for violation of the rule. And I realize maybe what I'm
6 doing here is prolonging or just putting into a shorter
7 time frame issues that will need to be dealt with, but I'm
8 not going to waive the rule in this particular case when
9 I've imposed it in other cases. And there's a reason that
10 rule was imposed, so that this Court could control just
11 this type of discovery and not have it go on a process
12 that, that maybe isn't as germane as it needs to be for the
13 particular issue that's being dealt with at that particular
14 time but is basically a fishing expedition that slows this
15 process down.

16 So that's basically my ruling. I think it has
17 taken care of probably everything before me.

18 MR. ALTER: Your Honor, Jonathan Alter.

19 May I correct the record or ask for a correction
20 to the record? You said that you were quashing the
21 discovery with respect to CrossHarbor and Discovery Land.
22 I assume you also meant against the ad hoc committee.

23 THE COURT: I did.

24 MR. ALTER: Thank you.

25 MR. CHEHI: Your Honor, Mark Chehi.

1 I would just like to mention for the record that
2 on the day of the last hearing, in-court hearing on
3 approval of the interim financing, I did, indeed, Your
4 Honor, make an oral motion for the discovery.

5 THE COURT: Well, I guess without going back and
6 looking at the record, I don't know that I recall that.
7 But I mean at this point, I'm going to, I'm going to quash
8 the motion because I don't see a written motion at this
9 point in time, and I think the rule is specific.

10 And, you know, I want to see -- if there's
11 dispute on discovery, I'll tell you, everyone that's
12 involved and participating here: I take dim view of
13 discovery disputes. I've told every practitioner that's
14 ever appeared before me I don't appreciate it at all. I
15 expect the parties to be able to work out discovery issues.
16 And if it's a matter that can't be resolved, and certainly
17 if it's a privilege matter, we'll go down through each item
18 at a hearing on the record, and I'll determine what is and
19 isn't germane, and it will be provided. But I'll tell you,
20 I don't appreciate the fight. You need to work these
21 things out mutually. You'll have a lot better result.

22 As it relates to the hearing that's coming up, I
23 mean I would expect that there's going to be -- as
24 Mr. Patten referenced, an application for employment of, of
25 Discovery, which, obviously, I think there's probably going

1 to be an objection to based upon what I've heard today.
2 And it obviously - (inaudible, audio cuts out) -
3 specifically references now, there may or may not be a
4 condition that Discovery has to be the property manager --
5 or that's probably not the proper term, but has to be
6 involved; although, Mr. Moore did address that briefly.
7 Obviously, that's an issue that will have to be dealt with
8 if -- unless we hear the contested application for
9 employment on the same day as we do the DIP financing that
10 I can then take under advisement and deal with
11 simultaneously. Because I think it is an issue that has --
12 that this Court will deal with one way or the other. I'm
13 just giving fair warning to the parties that you need to
14 consider and think about that.

15 And as it relates to other things that Mr. Chehi
16 has referenced, if there's a merit to any of the
17 statements, I will give him the opportunity to certainly
18 flush any of that out. And if there is any of that kind of
19 activity going on, this Court, even as I commented about
20 discovery, I take an even greater dim view of that sort of
21 activity between participants in this process and will rule
22 appropriately or accordingly. So I -- if there is merit to
23 anything that Mr. Chehi is alleging and arguing, it will be
24 dealt with, you know, by this Court; and if there isn't,
25 then let's move on and get this to conclusion and finality

1 so that the parties can deal with the situation.

2 The other thing that I will comment about, and
3 it's only because of prior rulings of this Court, as well,
4 that I just want the participants to be aware of - and it
5 may or may not be true, depending upon the final, final
6 outcome in this case - but: I have, in the past, looked
7 very carefully and scrutinized fees on an oversecured
8 creditor in fighting tooth and nail all the way through the
9 process and have disallowed fees where it appeared it was
10 just to fight when there was no jeopardy or prejudice to
11 the secured position. And I just raise that because if, in
12 fact, as I've talked about earlier in this hearing, there
13 have been -- the lienholders are protected through the plan
14 or a sale, then I'm going to review that carefully in any
15 fee app.

16 And, you know, as it stands now, I'm still
17 waiting for fee apps for the initial interim financing that
18 was provided by Credit Suisse, because, obviously, that's
19 part of what needs to be dealt with if, in fact, I go
20 forward with final approval of the CrossHarbor financing,
21 because part of that is that they pay off the priming lien
22 of the Credit Suisse interest and the approved attorney's
23 fees.

24 So we've got a lot of things on the table, and I
25 think we need to spend time to detail and to the things

1 that are important and germane at the time we're going
2 through it so that we get this thing concluded and the
3 secured creditors can get paid; and I would hope the
4 unsecured, too, but they have a little different position
5 than the secured creditors.

6 We will issue an order, but this will serve as a
7 bench ruling to be followed with a formal order that will
8 be entered, written, that you will receive.

9 Is there anything else that I can take up at this
10 time? Is there anything else that I can assist with?

11 If not, we'll be in recess.

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the electronic recording of the proceedings in the
above-entitled matter, all done to the best of my skill and
ability.

Jonny B. Nordhagen